



SITE REMEDIATION NEWS

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DEP to Co-Sponsor First Annual International Environmental Technology Expo

By: Marybeth Brenner
Office of Innovative Technology and Market Development

On April 20 and 21, 1999, the New Jersey Department of Environmental Protection (NJDEP) will be co-sponsoring the first annual International Environmental Technology Expo in Atlantic City, NJ.

The event will focus on the growing use of environmental technologies to help government and business and industry solve environmental problems and the growing need to quickly share this information with our partners in other communities, states and countries. With such tools as Geographic Information Systems (GIS) and databases, access to environmental technology information is expanding. Through the development of partnerships we can make the most efficient use of environmental information.

This conference and exposition is a partnership effort with the Environmental Council of States (ECOS), the Interstate Technology and Regulatory Cooperation Workgroup (ITRC), the New Jersey Corporation for Advanced Technology (NJCAT) and the US Environmental Protection Agency (USEPA). Through this conference we hope to establish new partnerships which will help us promote the use of environmental technologies.

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The program is designed to bring together representatives from across the country and the world to address such topics as innovative environmental technologies, brown-fields cleanup using innovative treatment technologies, technology verification/certification, electronic data exchange and partnering. Through panel discussions, presentations, workshops, exhibits and technology demonstrations we will provide an opportunity to share information, showcase technologies and identify new technology needs in the United States and internationally. Additionally, the ITRC will be sponsoring workshops on both days of the conference to provide training in many remediation technology areas. These workshops will be available to all conference attendees.

UST Fund and Enforcement of December 22, 1998
Deadline — See *Changes to UST and Hazardous Discharge Site Remediation Funds* article on pages 9 and 10.

You are invited to participate in this exciting new event as an attendee, exhibitor or presenter.

Check our web site for information and regular updates about the Expo. Our address is www.state.nj.us/dep/srp. You may also call us at (609) 292-0952 for information or copies of the brochure.

Four Steps to that No-Further-Action Letter

By: Wayne C. Howitz
Industrial Site Evaluation

Over the years, developers, banks and other lending institutions have become increasingly aware of environmental responsibilities and liabilities. This is evidenced by the contractual agreement between private parties that requires a "No Further Action/Covenant Not to Sue" letter (NFA/CNS) being obtained as one of the prime contractual obligations for financing to be approved to develop or to transfer the property.

This type of contractual stipulation between private parties has focused additional pressures on the Site Remediation Program. While these contracts specify the NFA/

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Four Steps to that NFA Letter (continued)

CNS as the end product, the contracts rarely specify that the quality of work conducted at a site to obtain the NFA/CNS must be in accordance with the Technical Requirements for Site Remediation (N.J.A.C. 7:26E). The Department is then inadvertently placed in a position to judge the quality of the remedial effort within a "private party" specified timeframe. Poor quality work at this critical period only leads to frustration with the developer, lending institution and the Department. Only through open communication and predictable requirements can we work in remediating a contaminated site for development.

The Site Remediation Program reviews all submissions in accordance with the Technical Requirements for Site Remediation. The technical requirements provide the minimum requirements necessary to identify areas that require investigation and remediation. Review and approval times can be reduced (along with frustration levels) when the technical requirements are followed. All too often, the Site Remediation Program has seen contracts terminated or penalties incurred when remediations are not conducted in accordance with the Department's technical requirements. This often results in the case management team spending additional time and resources performing the work the consultant should have provided. This not only delays reviews and approvals, but also diverts limited resources from other projects.

Taking Department review times into account when establishing contractual milestones is also critical. The Department's review times are specified in the Environmental Accountability and Management Act (N.J.S.A. 13:1D-114) as follows:

- Preliminary Assessment/Site Investigation Review (PA/SI) 45 days
- Remedial Investigation Review (RI) ... 60 days
- Remedial Action Workplan Review (RAW) 120 days

The Site Remediation Program has dedicated professional staff who will do everything within their authorities to conduct timely reviews and approvals. In order to minimize or eliminate any delays, the following should be used as a guide.

1. If approvals are required from the Department, our review times must be incorporated within your schedules.
2. Identify and delineate all areas of concern for which approval is needed. For example, coordinating RI work on a single underground storage tank system will not result in a full site NFA/CNS unless all potential areas of concern are evaluated under a PA/SI and remediated as appropriate.

3. Perform all work in accordance with the Department's Technical Requirements for Site Remediation (N.J.A.C. 7:26E). Contracts should specify that the remedial work must be conducted pursuant to N.J.A.C. 7:26E. This will focus the contractual obligation on compliance with N.J.A.C. 7:26E.
4. Notify your case manager in advance of any critical milestones. The key to a timely review and approval is communication.

PCB Remediation Policy

The remediation of Polychlorinated Biphenyls (PCBs) in New Jersey is governed by both the federal Toxic Substances Control Act (TSCA) and the state Spill Act. Up until recently PCBs over 50ppm in soil could only be disposed of in a TSCA licensed facility. Additionally the Soil Cleanup Criteria used 50 ppm as the protection of groundwater criteria. These essentially defined 50ppm as the removal criteria. Remedial decisions therefore, usually involved excavation and removal of PCBs over 50ppm, with concentrations under 50ppm being capped and deed restricted. In deference to TSCA, along with the protection of groundwater criteria, SRP used the 50ppm number.

EPA has recently finalized new rules governing PCBs and specifically included criteria for remediation of PCBs. The rule, 40 CFR 761.61, now allows for levels up to 100 PPM to be left on site with the appropriate engineering and institutional controls. One provision in the rule, 40 CFR 761.61(c), allows for a site-specific risk based alternative. The petitioner can perform a risk assessment and request an alternate cleanup number from the EPA Regional Administrator on a case-by-case basis. This change still requires that protecting groundwater be addressed on a case-by-case basis and may still require removal at the 50ppm level.

If protection of groundwater is addressed, and in keeping with our policy of adherence to TSCA, as of November 1, 1998, the Site Remediation Program will accept 100ppm as the soil removal criteria for PCBs in **new** Remedial Action Workplan (RAWP) submittals. Any previous decisions using the 50 ppm criteria will not automatically change, and must be reviewed on a case by case basis. Adherence to the other provisions of sec. 761.61 and the Technical requirements would also be required. If a petition for a Risk Based alternate number is submitted to the Regional Administrator, the petitioner must make a concurrent submittal to the case manager. The SRP will perform an independent review of the petition in order to determine the acceptability of the alternate criteria. Both EPA and SRP must agree to the alternate number for the RAWP to be approved.

Soil Cleanup Criteria for Chromium and its Compounds Issued by NJDEP

By: Teruo Sugihara
 Bureau of Environmental Evaluation and Risk Assessment

Effective as of September 18, 1998, the New Jersey Department of Environmental Protection has approved soil cleanup criteria related to chromium and its compounds. The basis for these values is to a large extent derived from U.S. Environmental Protection Agency (USEPA) toxicological information, exposure pathway models, exposure assumptions, risk calculations, and air model utilization.

currently allows the determination of site-specific soil cleanup criteria. Residential and nonresidential land use scenario soil cleanup criteria are the same due to the acute nature of the endpoint.

^{6.} Exposure models and assumptions have been developed or are being finalized. The Department currently allows the determination of site-specific soil cleanup criteria. Due to the effects of vehicular traffic, the nonresidential land use scenario soil cleanup criterion will be lower than the residential land use scenario soil cleanup criterion.

^{7.} Due to the highly variable soil conditions throughout New Jersey, it is not possible at this time to develop a generic impact to ground water criterion. However, the site-specific criterion would be the same for both residential and nonresidential land use scenarios.

Pathway	Land Use Scenario	
	Residential	Nonresidential
<i>For trivalent chromium and its compounds:</i>		
Dermal ¹	None ²	None ²
Inhalation	None ³	None ³
Ingestion	120,000 ppm	Not regulated ⁴
Impact to ground water	None ²	None ²
<i>For hexavalent chromium and its compounds:</i>		
Dermal ¹	Under development ⁵	Under development ⁵
Inhalation	270 ppm	20 ppm (preliminary) ⁶
Ingestion	240 ppm	6,100 ppm
Impact to ground water	Site-specific ⁷	Site-specific ⁷

In addition to the above, ecological impacts must also be considered. As the Department is currently precluded by public law from developing ecologically based cleanup criteria for statewide use, each situation will be handled on a site-specific basis. Potential surface water impacts will also be evaluated on a site-specific basis.

Supporting documentation for these criteria are in "Summary of the Basis and Background of the Soil

Cleanup Criteria for Trivalent and Hexavalent Chromium," which is dated September 18, 1998. This document is available for viewing on the internet at www.state.nj.us/dep/srp/index.htm. It is also available in printed form upon request from Dr. Teruo Sugihara, New Jersey Department of Environmental Protection, 401 East State Street, P.O. Box 413, Trenton, New Jersey 08625-0413. Questions concerning the above can also be directed to Dr. Sugihara via telephone at (609) 633-1356.

NOTES:

- ^{1.} The specific human health endpoint considered for the dermal pathway is allergic contact dermatitis. This has been determined by the Department to be an endpoint requiring regulation. The USEPA does not use allergic contact dermatitis as a basis for determining the need to remediate a site.
- ^{2.} Under normal environmental conditions, trivalent chromium is insoluble in water. Therefore, exposure via this pathway is not relevant.
- ^{3.} Toxicological data for trivalent chromium do not exist for this exposure pathway. Therefore, soil cleanup criteria cannot be established.
- ^{4.} For the nonresidential land use scenario, ingestion of insoluble trivalent chromium does not pose an unacceptable risk. Therefore, a soil cleanup criterion is not proposed.
- ^{5.} Exposure models and assumptions have been developed or are being finalized. Generic soil cleanup criteria are also being developed by the Department. The Department

General Information:

The *Site Remediation News* is published by the Program Support Element. If you want to receive the *Site Remediation News*, it is available on the web page at <http://www.state.nj.us/dep/srp>. If you want a paper copy, please send a request containing your name and address to:

George H. Klein
 Program Support Element
 PO Box 413
 Trenton, New Jersey 08625-0413

Integration of Natural Resource Injury Assessment & Restoration into the Site Remediation Process

By: Linda Grayson

Bureau of State Case Management, and
Barbara Dietz and Ernie Hahn
Office of Natural Resource Damages

The Office of Natural Resource Damages (ONRD), formed in 1993, is part of the Natural and Historic Resources Program. The mission of ONRD is to ensure that the public's natural resources, injured by oil spills or the discharge of hazardous substances, are restored in a way which adequately compensates the public for the injury to or loss of their natural resources.

Over the past year, the Office of Natural Resource Damages (ONRD), the Site Remediation Program (SRP) and the Division of Law have been working to develop procedures to more fully integrate natural resource injury assessment and restoration into the site cleanup process. (The final details are currently being worked out.) The Department wants to take this opportunity to provide an overview of how the issue of natural resource injuries will be integrated into the site remediation process.

The NJDEP is the designated trustee for New Jersey's natural resources. ONRD, through the Office of Natural Resources Program, represents the Commissioner on natural resource assessment and restoration issues. The Department's general authority for the investigation and restoration of resource injury is threefold:

First, and most importantly, the following New Jersey statutes which provide this authority include; the Department's enabling Act, the Water Pollution Control Act, the Spill Compensation and Control Act, the Industrial Site Recovery Act and the Brownfield and Contaminated Site Remediation Act. These statutes were among the statutes that the Department cited as its authority for its Technical Requirements for Site Remediation. ("Technical Regulations", N.J.A.C. 7:26E)

Second, common law provides additional authority for recovery of natural resource damages, particularly the State's quasi-sovereign and public trust interests in natural resources. The premise for natural resource damage provisions is a body of a law known as the Public Trust Doctrine.

Finally, the Department has the authority to pursue natural resource damages under several federal statutes, including the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act and the Oil Pollution Act of 1990. While these statutes do not

provide the Department with authority for its regulations concerning natural resource injuries, they do provide alternate legal remedies for the State.

The Department's Technical Regulations define the investigative process that a party conducting remediation must take in order to assess whether a discharge has impacted or has the potential to impact natural resources. The first step in the process is a baseline ecological evaluation. If the baseline ecological evaluation indicates that contaminants of ecological concern exist on site and a pathway to a sensitive environment exists, an ecological risk assessment must be conducted. Upon completion of the ecological risk assessment, all data needed for the development of a restoration plan should be available. When past impacts to natural resources are evident or when the ecological assessment indicates that an injury to natural resources has occurred, the SRP case manager will involve an ONRD staff member. The role of ONRD will be to oversee the restoration and coordinate with the federal natural resource trustees, when necessary.

Typically, the Department prefers that the responsible parties conduct natural resource restoration projects (i.e. enhancement or conservation projects) to compensate the public for natural resource injuries as opposed to cash settlements. Often, restoration implemented by the responsible parties can be accomplished in a more timely and cost effective manner, thus restoring the public's resources sooner. When restoration is implemented as part of the remedy, ONRD will act as a case team member to facilitate implementation of the restoration plan. However, when a party conducting remediation chooses to "cash out," or when the remediation is too far along to incorporate restoration aspects, the ONRD will manage the restoration aspects separately from the rest of the remediation.

Criteria for when SRP case managers should involve the ONRD are being developed. For example, the Department has determined that it will not pursue damages for injuries to ground water where the contaminant is not expected to move beyond the property where the discharge occurred, provided that contaminated ground water has not impacted other resources on site such as surface water or wetlands. Additional criteria are being considered, such as duration of injury and size of plume, which may further limit the types of cases that the Department pursues.

No Further Action letters issued by the SRP will include language that indicates the status of natural resource injuries for sites where they have been determined to exist. Specifically, if restoration has been completed, the NFA letter will indicate that no additional obligation remains including natural resource damages. With the Department's approval a party may bifurcate restoration from the rest of remediation by committing to conduct restoration at a later

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Integration of Natural Resource Injury Assessment & Restoration into the Site Remediation Process (continued)

date under an existing Administrative Consent Order or Remediation Agreement, or through the execution of a Restoration Agreement. A remediation funding source must be established in an amount equal to the value of the restoration project. This commitment will be memorialized in a conditional NFA letter, and the letter will specify that this condition of the NFA is not an obligation of successive owners.

Financial assistance is available to parties conducting remediation from the Hazardous Discharge Site Remediation Fund or the UST Fund. However, the use of these funding sources for restoration is limited to restoration which occurs as part of remedy implementation; funding made available through loans and grants may not be utilized to offset damages being settled through "cash outs" or offsite restoration projects such as property purchase.

The information contained herein is intended to be a broad overview of the various issues considered during the Department's efforts to more fully integrate assessment and restoration of natural resource injuries into the established process of site remediation as seamlessly as possible. Documents to guide the process are in final draft with distribution for comment and use expected by the end of December. Tools to facilitate implementation (such as shell letters, tracking systems, referral forms, implementation plans, etc.) have been or are being developed.

Dishonest UST Contractor Loses Certification for 3 Years

By: Josh Gradwhol
Bureau of Field Operations

Case closed. Final outcome: guilty on three counts of theft by deception. The punishment includes 150 of hours of community service; probation for three years, including a clause that the guilty party may not participate in any environmental investigation or remediation in New Jersey during the probation period; and an order that the individual must pay back his clients the fees charged for the services.

In February 1997, the NJDEP received a Site Investigation Report that documented the removal of regulated underground storage tanks at a facility in southern New Jersey. The report included a "copy" of the NJDEP permit issued to the facility authorizing the removal of the underground storage tanks. It was immediately recognized that the permit number referenced in the report corresponded to another facility in northern New Jersey. The NJDEP

carefully checked its records to ensure that duplicate permits were not issued to multiple facilities. Upon closer review of the copy of the permit included with the report, it was recognized that there were too many errors on the document and it was in fact a forgery.

The NJDEP immediately referred the case to the Division of Criminal Justice. After many months of investigation, the case appeared before a Superior Court Judge in May 1998, where the individual admitted to forging three separate permits. The sentence began June 1998.

The NJDEP has been more than flexible with the implementation of the penalty provisions of the UST certification laws. The NJDEP will typically issue a warning to most first-time offenders, holding any penalties and/or suspensions in abeyance unless repeated offenses occur.

As a certified individual or firm assisting an underground storage tank owner, you are obligated by law to abide by the rules that govern the operation, maintenance, upgrade and closure of regulated underground storage tanks in New Jersey. This includes ensuring that all required permits are obtained before commencing with any regulated activity.

Also, you should never assume that your client knows the capacity or substance stored in the UST. A certified person should confirm the tank size and contents before beginning a project. As an example, the NJDEP frequently gets calls from contractors in the field who have just confirmed in the middle of a UST closure that the tank is not a non-regulated heating oil UST but a regulated UST that requires registration and NJDEP authorization to close. They request an emergency permit so they can continue with the project without interruption. This is not an emergency and any work completed without a permit will result in a first offense warning. Poor business practices are not an excuse for starting with a project without all necessary permits. The Underground Storage tank rules also require you as a certified individual or firm to report the confirmed release of a discharge of a hazardous substance from a regulated underground storage tank system. If your client will not report the discharge, you must, or risk suspension of your certification.

The NJDEP relies heavily on the integrity and honesty of every certified firm and individual to assist the regulated community in all aspects of underground storage tank compliance. As a certified individual, you are the first in the line of the defense in preventing or remediating discharges of hazardous substances to the environment. If a simple procedure like obtaining a permit can not be followed, what confidence can the NJDEP have in the individual or firm. Since DEP must rely on the certification process, the NJDEP will continue to pursue all violations to the fullest extent of the law.

Maintaining Engineering and Institutional Controls on Residential Property Conversions: Whose Obligation?

By: Wayne C. Howitz, Assistant Director
Industrial Site Evaluation Element

How to protect human health from the risk posed by hazardous substances at contaminated sites has been a hotly debated topic in New Jersey and across the country. Representatives of some New Jersey industries have long argued that excavation and removal remedies were too expensive in many soil cleanup cases, that they should be allowed to leave contamination onsite, and that they could successfully limit human exposure to that contamination via other, less expensive means. These calls for change have not gone unheard.

New Jersey allows the person responsible for conducting the remediation to use engineering and institutional controls as part of a remedial action to ensure that exposure is eliminated when concentrations of soil contaminants remain above the unrestricted direct contact use criteria. There has been a growing debate, however, concerning who has the responsibility to inspect and maintain engineering and institutional controls that are implemented as part of a remedial action for a contaminated site. The purpose of this article is for the Department to continue a discussion of the issues by soliciting a broader dialogue among all of the various stakeholders. See proposed rulemaking at 30 NJR 2373.

The use of institutional controls as a notice mechanism to interested persons is not a new concept. A wide variety of institutional controls are used throughout the United States as mechanisms to provide notice to environmental conditions that pose a risk to human health and the environment from hazardous substances and other contaminants. See, for example, John Pendergrass, "Use Of Institutional Controls as Part of a Superfund Remedy: Lessons from Other Programs," 26 ELR 10111 (1996). States such as California, Massachusetts, Michigan, Washington as well as the United States Environmental Protection Agency utilize institutional controls. See, for example, U.S. EPA, Institutional Controls: A Reference Manual," Workgroup Draft - March 1998.

Institutional controls are mechanisms the Department uses, either alone or as a supplement to engineering controls. These institutional controls are designed to provide information concerning appropriate limits on human activities at or near a contaminated site in order to ensure the effectiveness of the remedial action. Institutional controls are necessary for contaminated sites where

contaminants will remain after the implementation of the remedial action in concentrations above the unrestricted (residential) use criteria. The most common institutional control is a deed notice. A deed notice provides notice about the conditions of real property to which it is attached. Historically since at least 1991, the Site Remediation Program has used deed notices on a case-by-case basis where soil contaminants remain onsite at concentrations that exceed the residential cleanup criteria. The use of these institutional controls, however, has raised certain issues that warrant further policy development.

Departmental Concerns

After several years of the Department's use of institutional controls as part of remedial actions for contaminated sites, the Legislature in 1993 required the use of notices as part of certain remedial actions. N.J.S.A. 58:10B-13a(2). This year, the Legislature amended that statute, requiring that the notice be filed in the same manner as deeds and other interests in real property. There are also other statutory responsibilities related to engineering and institutional controls.

These responsibilities begin with the selection and implementation of a remedial action consistent with, among other things, the Brownfield and Contaminated Site Remediation Act. The person responsible for conducting the remediation has the burden to demonstrate that the remedial action is protective of public health, safety and the environment. N.J.S.A. 58:10B-12g. One of the specific factors that the person responsible for conducting the remediation must demonstrate is the technical performance, effectiveness and reliability of the proposed remedial action. For a remedial action that includes leaving soil contamination behind above the cleanup criteria that would allow for restricted use of the site, a deed notice is required in order to put people on notice of the environmental conditions of the property. Thus, the person must demonstrate that a deed notice will continue to provide the appropriate notice for as long as the contamination remains at the site above residential cleanup criteria.

The Department has recently become more concerned with the effectiveness of institutional controls as part of the remedial action for a contaminated site. Research has shown that institutional controls "are prone to failure due to changes in priorities, funding, the governmental system, or other conditions" and that "the institutions responsible for spreading the word do not do so." Environmental Law Institute, "Institutional Controls In Use," Research Report, September 1995.

In addition, the Department is seeing a growing number of requests for engineering and institutional controls as part of remedial actions at industrial sites that are undergoing

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Maintaining Engineering and Institutional Controls on Residential Property Conversions: Whose Obligation? (continued)

redevelopment for residential use. Increasingly, the parties are raising the issue as to who is responsible for the inspection and maintenance of the engineering and institutional controls.

Who Has the Obligation?

There are three classes of persons who may have the responsibility to maintain any engineering and institutional controls that are part of the remedial action at a contaminated site: The person responsible for conducting the remediation, a person in any way responsible for the hazardous substances causing the contamination, and subsequent owners and operators of the site.

The person responsible for conducting the remediation of a contaminated site, who may or may not be a responsible party under the Spill Compensation and Control Act (Spill Act), has certain responsibilities concerning the engineering and institutional controls.

Another class of persons with this responsibility are the persons who are legally responsible for the contamination. Under the Spill Act, N.J.S.A. 58:10-23.11, this includes any person who is in any way responsible for the hazardous substance which is discharged. N.J.S.A. 58:10-23.11g. This liability exists whether or not the responsible party is actually involved with the remediation.

There is another class of persons who also have this concurrent responsibility. Beginning in 1993, each subsequent owner and operator of any real property for which a remedial action has been implemented that includes engineering or institutional controls is also obligated to maintain those controls as the Department requires. N.J.S.A. 58:10B-13c. This responsibility is further emphasized in the language in the No Further Action/Covenant Not to Sue (NFA/CNS) letter as required by the Brownfield and Contaminated Site Remediation Act. Persons conducting the remediation are required to provide notice to the Department upon address change and only subsequent purchasers who comply with the provisions for the engineering/institutional controls receive the protections offered by the NFA/CNS.

The responsible party and the person responsible for conducting the remediation, when different from the responsible party, argue that their obligation should end when the property is transferred, consistent with their reading of the Brownfield Contaminated Site Remediation Act. Few "subsequent" owners and operators have participated in this debate. Shifting this obligation solely to the subsequent owners and operators becomes more compli-

cated when there are multiple concurrent subsequent owners and operators. This may be the case in transfers to multiple residential owners of condominiums and townhouses. In these scenarios there may be owner associations responsible for the upkeep and maintenance of common areas that could assume these obligations. In other situations an appropriate mechanism is not as clear.

In situations where single family dwellings are constructed upon properties with engineering and institutional controls, not all homeowners can be expected to have the wherewithal to comply with these obligations. The Department is concerned in this situation that the homeowner who has been made fully aware of the engineering and institutional controls at the time of purchase may forget the inspection and maintenance requirements that need to be conducted and reported to the Department.

Under the proposed amendments to the Technical Requirements for the Remediation of Contaminated Sites, the Department has clarified that the person responsible for conducting the remediation has the responsibility of maintaining and inspecting all engineering and institutional controls. See proposed amendment N.J.A.C. 7:26E-6.4(g) at 30 NJR 2393. The extent to which that person retains this responsibility after transfer of the property, or upon implementation of the remedial action when that person is not the owner of the property, is the area in which the Department specifically solicits additional discussion.

The Department presents the following examples to facilitate the discussion of these issues.

- I. A responsible party implements a remedial action at:
 - A. Property it does not own or lease, such as a landfill
 - B. Its own property and then sells the property for industrial/commercial use:
 1. To a single owner
 2. To multiple owners
 - C. Its own property and then sells the property for mixed industrial/commercial and residential use:
 1. To a single owner
 2. To multiple owners
 - D. Its own property and then sells the property for residential use:
 1. To a single homeowner
 2. To multiple homeowners
 - E. Its own property and then the property goes through multiple residential transfers, with the property ending up in the hands of a church or other nonprofit group

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Maintaining Engineering and Institutional Controls on Residential Property Conversions: Whose Obligation? (continued)

- F. An ISRA-subject owner implements a remedial action at its property
 - 1. After triggering ISRA itself
 - 2. After a tenant triggers ISRA
- G. An ISRA-subject tenant implements a remedial action at
 - 1. Its leasehold after triggering ISRA
- II. A non-responsible party developer implements a remedial action at:
 - A. Its own property, then retains title, but leases the property
 - B. Its own property and then sells the property for industrial/commercial use:
 - To a single owner
 - To multiple owners
 - C. Its own property and then sells the property for mixed industrial/commercial and residential use:
 - To a single owner
 - To multiple owners
 - D. Its own property and then sells the property for residential use:
 - To a single owner
 - To multiple owners
 - E. Property it does not own or lease

Further Comments and Discussions

The Department welcomes all written comments that any of the stakeholders wish to make to enhance the discussions on this issue. Written comments may be forwarded to:

Assistant Commissioner Richard Gimello
 Site Remediation Program
 P.O. Box 028
 401 East State Street
 Trenton, New Jersey 08625-0028

General Information:

Please be sure to include the box number on all mail addressed to the Industrial Site Evaluation Element. Some mail has been received by the element many weeks past the date on the correspondence, due to the omission of the box number. The proper way to address mail to the element is:

Section Name or Case Manager's Name
 Industrial Site Evaluation Element
 PO Box 028
 Trenton, New Jersey 08625-0028

Update on Electronic Data Submittals

The November 1997 edition of the Site Remediation News carried an article about resources available to assist in Electronic Data Submittals. Several updates have occurred since that time, and these are summarized below. It is recommended you visit our Home Page at www.state.nj.us/dep/srp for a complete description of and access to the resources mentioned.

On November 1, 1998, the **HazSite4 Data Submittal System** was updated and made available in one version for Windows 3.1 and another version for Windows 95/98. A **HazSite User's Guide** has also been written. The **SRP-Electronic Data Interchange Manual (SRP-EDI)** was updated in January 1998. The **EDSA** routine that allows the user to conduct administrative and completeness checks on data prior to submittal has also been updated, and is now available on diskette. There are plans to make this document available on CD in the near future. A new addition to the Home Page, a document entitled **Frequently Asked Questions**, provides answers to some of the most commonly asked questions regarding electronic data submittal. All of the above mentioned resources are available to download from the SRP Home Page, and are available in "hard copy" by calling (609) 292-9418.

The **State Plane Feet Calculator Spreadsheet** has been corrected and made more user-friendly as of October 1998. And finally the Army Corps' program **CorpsCon** has been updated as of October 1998.

The **EQWIN** spreadsheet was titled erroneously, and can now be accessed by clicking on **EarthSoft's EQUIS**. The **HZASCII** and **HZ971014** files have been removed until they are further refined.

NOTE: The acceptable formats and examples for SRP Identification numbers has been revised. Please see the **Frequently Asked Questions**, Section 3.

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Changes to UST and Hazardous Discharge Site Remediation Funds

By: Colleen Kokas
Bureau of State Case Management

The Site Remediation Program administers two funding programs for contaminated sites, the Underground Storage Tank Remediation, Upgrade and Closure Fund and the Hazardous Discharge Site Remediation Fund. Several changes have been made in the review of applications for funding from these funds. These changes are discussed in this article.

HDSRF "Innocent" Party Grants

The Department has received inquiries about the approval process for "innocent" party grants from the Hazardous Discharge Site Remediation Fund. The statute states that a person qualifies for an "innocent" party grant if:

- 1) that person acquired the property prior to December 31, 1983, and
- 2) the hazardous substance or waste that was discharged at the property was not used by the person at that site, and
- 3) that person certifies that he/she did not discharge any hazardous substances or hazardous wastes at an area where a discharge is discovered.

During the review of an application the Department will determine if each of the three criteria listed above has been met. The Department will confirm the date of acquisition of the property via the Deed and require a certification from the applicant regarding any discharges on the property. This certification should indicate whether the applicant had ANY discharges of ANY hazardous substances or hazardous wastes at ANY area of the property.

The Department will determine that an applicant has met the second criteria if:

- 1) the hazardous substances or hazardous wastes requiring remediation were never used by the applicant; and
- 2) the hazardous wastes or hazardous substances are not products used by the applicant that have commingled or combined with other substances to create hazardous substances or hazardous wastes requiring remediation; and
- 3) the hazardous substances or hazardous wastes are not breakdown products of substances used by the applicant; and
- 4) the remediation addresses **only** those hazardous substances or hazardous wastes that were never used by the applicant.

The Department reserves the right to focus on less than an entire site in the review of "innocent" party grant status.

If the Department determines that an applicant is eligible for an "innocent" party grant, it has no bearing as to whether an applicant is liable or in any way responsible for a discharge.

Performance of a PA/SI/RI will identify the discharges at a site. Therefore, no awards for an "innocent" party grant will be made by the Department until the completion of the RI. If the applicant meets all three criteria, the Department will reimburse the applicant up to 50% of the reasonable costs incurred for the PA/SI/RI as long as the work was performed after June 16, 1993 (the effective date of the HDSRF legislation) and the work was conducted with DEP oversight. In addition, if an applicant wants to apply for an "innocent" party grant for the remainder of the remediation, the applicant would have to apply prior to the work being conducted. The Department would review requests for total remediation costs up to \$1 million in financial assistance.

A prime example of an applicant who would qualify for an "innocent" party grant is a developer who acquired a piece of property in 1983 or before and during the ownership never operated at the site. The developer, who never used any hazardous substances or hazardous wastes anywhere at the site, would be eligible, if money were available, for an "innocent" party grant.

HDSRF and UST Legal Fees

The Hazardous Discharge Site Remediation Fund and the Underground Storage Tank Fund do not consider attorney fees to be remediation activities that are eligible project costs for funding under either of the programs. The Department had approved some attorney fees in the past when the Department determined the costs were directly related to the remediation. These types of costs will no longer be approved in future requests for funding from either of the Funds. The application for the Hazardous Discharge Site Remediation Fund has been modified to reflect that legal fees are not an eligible cost for reimbursement.

HDSRF Municipal Grants

On January 6, 1998, the Hazardous Discharge Site Remediation Fund expanded the category under which a municipal government entity or the New Jersey Redevelopment Authority can acquire a grant to perform a Preliminary Assessment, Site Investigation or Remedial Investigation. This includes properties that are voluntarily conveyed to municipalities for the purpose of redevelopment. The statute states that:

"At least 10% of the moneys shall be allocated for financial assistance and grants to municipal governmental entities and the New Jersey Redevelopment Authority that owns or holds a tax sale certificate on real property or have acquired real

(continued on page 10)

Changes to UST and Hazardous Discharge Site Remediation Funds (continued)

property through foreclosure or other similar means, *or by voluntary conveyance for the purpose of redevelopment* on which there has been or on which there is suspected of being a discharge of hazardous substances or hazardous wastes.”

The Hazardous Discharge Site Remediation Fund Program has received several applications from municipal governmental entities requesting grants to conduct Preliminary Assessments on properties that they plan to redevelop. Many of these properties have been owned by the municipal governmental entity for a number of years. Although the statute does allow HDSRF to award grants to municipal governmental entities that have acquired properties for the purpose of redevelopment, the statute does not address those properties that were acquired prior to the effective date of the statute. Therefore, the Department will approve a grant to a municipal governmental entity applying for a PA/SI/RI on a property that was voluntarily conveyed for redevelopment, if the property was conveyed after the effective date of the statute, January 6, 1998.

Fees/Oversight Costs and the UST Fund

In November 1996, the New Jersey Legislature adopted amendments to the State's constitution regarding the funding of several environmental projects using 4% of the Corporate Business Tax. Projects that were funded include the Underground Storage Tank Remediation, Upgrade and Closure Fund that provides for loans and grants for petroleum underground storage tanks. The constitutional amendment requires that no moneys appropriated for the UST Fund be expended on any direct or indirect administrative costs of the State or any of its departments, agencies or authorities. Therefore, the Department cannot allow any of its fees or oversight costs to be paid from the UST Fund.

Based on historical oversight cost data on homeowner cases, the Department has calculated the average cost of overseeing an underground storage tank case at a private residence that involves only soil contamination to be approximately \$500 to review the remedial action report. Therefore, homeowner cases that receive grants from the UST Fund for soil only remediation will have the review of their remedial action report capped at \$500. Any subsequent remedial action reports will be an additional \$500 for each submission. Any other party receiving a grant will be routinely billed by the Department's Direct Billing Unit and will be responsible for paying the amount specified on the bill. For those parties that may have difficulty paying the oversight costs, the Direct Billing Unit will discuss the option of a payment plan to meet these financial obligations.

Any applicants that receive a loan from the UST Fund will be responsible for paying the bill in its entirety. However, as with the grant recipients, the Direct Billing Unit will discuss the option of a payment plan when a bill for oversight costs is received.

UST Fund and Enforcement of December 22, 1998 Deadline

The UST Fund legislation requires that those parties that are applying for financial assistance from the UST Fund take certain actions if they will not be able to meet the December 22, 1998 deadline for upgrading a regulated tank to avoid enforcement from the Department. The statute requires **all** of the following actions be taken:

- 1) The applicant submits an application for financial assistance from the UST Fund prior to December 22, 1998;
- 2) The New Jersey Economic has not acted on the application as of December 22, 1998;
- 3) The applicant agrees to enter into an administration consent order with the Department to comply with the upgrade, closure and remediation requirements;
- 4) The applicant complies with the provisions of the administrative consent order; and
- 5) The applicant maintains an acceptable method of release detection for the regulated tanks that are the subject of the application for financial assistance.

The UST Fund Program will be forwarding an administrative consent order to all those applicants who have applied to the UST Fund for financial assistance for regulated tanks. If an applicant will not be in compliance with the December 22, 1998 deadline, it will be up to the applicant to return the completed administrative consent order to the Department and to comply with the other requirements listed above to avoid enforcement actions.

Contacts for the Funds

Questions concerning the Hazardous Discharge Site Remediation Fund should be directed to Edward Stankiewicz at (609) 633-1487. General information regarding the fund as well as the application is provided on the Site Remediation Program's home page at www.state.nj.us/dep/srp/financial.

Questions regarding the Underground Storage Tank Remediation, Upgrade and Closure Fund should be directed to Dominic Picardi at (609) 984-4464. General information regarding the fund as well as the application is provided on the Site Remediation Program's home page at www.state.nj.us/dep/srp.

CORRECTION: Petroleum UST Remediation, Upgrade And Closure Fund Created

The May 1998 issue of the *Site Remediation News* contained an article on the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. In this article it incorrectly stated that to qualify for a hardship grant an applicant must have a taxable income of less than \$100,000 **or** net worth, exclusive of applicant's primary residence, of less than \$100,000. In order to qualify, an applicant must have a taxable income of less than \$100,000 **and** net worth, exclusive of applicant's primary residence, of less than \$100,000. Please note this important distinction when applying for a hardship grant.

SITE REMEDIATION NEWS

State of New Jersey
Department of Environmental Protection
Division of Publicly Funded Site Remediation
PO Box 413
Trenton, New Jersey 08625-0413

Senior Editor Donna Marie Zalis

Editorial Review Board Ron Corcory, Barry Frasco, Linda Grayson, Wayne Howitz, George King, George Klein, Kevin Kratina, Ed Putnam, Dave Sweeney, and Bob Van Fossen.

Graphics Support Kathy Pietras

Contributing Writers Marybeth Brenner, Wayne C. Howitz, Teruo Sugihara, Linda Grayson, Barbara Dietz, Ernie Hahn, Josh Gradwohl, and Colleen Kokas.

State of New Jersey
Department of Environmental Protection
Site Remediation Program
PO Box 413
Trenton, New Jersey 08625-0413
(609) 292-9120
<http://www.state.nj.us/dep/srp>

Christine Todd Whitman, Governor
Robert C. Shinn, Jr., Commissioner
